



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 4, 1998

Mr. Larry W. Schenk
City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR98-1382

Dear Mr. Schenk:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115757.

The City of Longview (the "city") received a request for all information used in a determination to terminate a police officer. You indicate that the city has provided the requestor with some of the requested records. You assert that other responsive records are protected from disclosure pursuant to section 552.103(a) of the Government Code. You submitted to this office for review two videotapes and a memo that you assert are representative samples of the records at issue.¹

The videotapes at issue are recordings of polygraph examinations, and we note that access to this type of information is generally governed by section 19A of article 4413(29cc), V.T.C.S. Section 19A protects from public release the records of a polygraph examination. However, section 19A(c) also provides that information acquired from a polygraph examination may be provided to the examinee. Because the requestor in this situation is the attorney for the person who was the subject of the polygraph examination, we assume the information is sought on behalf of the examinee. In Open Records Decision No. 565 (1990) at 8, this office determined that the statutory predecessor to section 19A(c) allows release of the polygraph information to the examinee but does not mandate release to the examinee. Thus, polygraph examination may be withheld even from the person who was the subject of the polygraph examination if the governmental body shows that there is an applicable

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

exception to protect the information. Open Records Decision No. 565 (1990) at 8-9.² We therefore will address your section 552.103(a) argument.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You submitted a petition showing that there is pending litigation, and our review of the submitted videotapes and documents indicates that they are related to the pending litigation. You therefore have shown the applicability of section 552.103(a) to the records at issue.

In making this determination, we assume that the opposing party in the anticipated litigation has not already seen the videotapes or other records at issue. Once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Also, the applicability of section 552.103(a) ends once the litigation concludes, Open Records Decision No. 350 (1982), although we note that the polygraph information is generally protected from public release by section 19A of V.T.C.S. article 4413(29cc).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 115757

²In Open Records Decision No. 565 (1990) at 8-9, this office determined that because the statutory predecessor to section 19A of article 4413(29cc), V.T.C.S. allows release of polygraph information to the examinee, polygraph information could not generally be withheld from disclosure as information made confidential by law or on the basis of privacy, under section 552.101 of the Government Code. However, the information could be withheld under various other exceptions to disclosure, such as section 552.111 of the Government Code. Open Records Decision No. 565 (1990) at 8-9.

Enclosures: Submitted documents

cc: Mr. Michael Rickman
2427 Baker Drive, Suite D
Mesquite, Texas 75150
(w/o enclosures)